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By email only

2 July 2021

Dear Minister,

Advice on the Draft Environmental Principles Policy Statement

From 1 July 2021 Defra has established the Interim Office for Environmental Protection (OEP). The Interim OEP's Board has already met and considered how we can best support Defra's ambitions for our natural environment. We are keen to play our full part.

We were therefore pleased to advise on Defra's draft environmental principles policy statement, as you have requested.

That draft policy statement is an important step towards implementing the Environment Bill, following Royal Assent. There is also much synergy between the OEP's role and that of the policy statement. Both are concerned with securing strong environmental governance, in support of protecting and enhancing our natural environment. The Interim OEP has also been charged with scrutinising, on a non-statutory basis, delivery of the 25 Year Environment Plan. We aim to report on progress against this plan later this year.

We trust, therefore, that we can offer a perspective you will find valuable, by looking at the policy statement in the wider context of environmental governance and delivery of government's environmental ambitions as set out in the 25 Year Environment Plan and more recently elsewhere. In our view, there is a valuable opportunity to make sure the policy statement is consistent with government's stated ambitions. In that way those ambitions, the principles and the policy statement become mutually reinforcing.

I enclose our advice, given by reference to the six substantive questions posed in Defra's recent public consultation. We will publish a copy of this letter and the advice on the OEP website.

At the outset I wish to express our strong support for government's aim for the policy statement; to put the wellbeing of our natural environment at the heart of policy-making. We also believe the five environmental principles covered in the Bill can be effective tools to support that aim. As the government seeks to build back better in response to the

coronavirus pandemic, and as it shows global environmental leadership in the G7, at COP26 and elsewhere, there are such important benefits to be reaped should policy-making across all departments embrace and live by these environmental principles.

We recommend that the draft policy statement is strengthened in a number of areas if it is to fully embrace these ambitions and deliver the benefits envisaged. Areas we recommend strengthening include:

1. **Structure** - We recognise the logic in structuring the policy statement around assessing policies' environmental effects. However, we are concerned that making this the first step, before directing policy-makers to consider the aims inherent in the principles themselves, may lead to unintended consequences. It risks policy-makers not applying the principles in all cases where doing so would be beneficial, or only applying them too late in policy development to be effective.
2. **Emphasis** - Overall the draft policy statement places more emphasis on what it does not require of policy-makers than what it does. We believe this detracts from government's stated ambitions and could obscure the benefits of applying the environmental principles. We advocate a more ambitious and directive (in the best sense) tone.
3. **Nature of environmental effects** - The draft policy statement appears focused on avoiding environmental harm. This is important of course, but this should not be at the expense of encouraging policy-makers to also take up opportunities to secure environmental benefits. Such an approach would align more closely to the government's overarching objective to restore and enhance our natural environment as set out in the 25 Year Environment Plan, as well as with meeting its commitments to delivering net zero, net biodiversity gain and a nature positive future.
4. **Certainty of effects** - The draft policy statement inconsistently describes the degree of certainty required before a policy-maker ought to consider an environmental effect or apply the environmental principles. We think the approach should be consistent. We also believe the right approach, and the approach government intends, is for policy-makers to consider those environmental effects which have the potential to arise.
5. **Proportionality** - We are concerned that the draft policy statement adopts a restrictive approach to proportionality. It insufficiently emphasises the weight to be afforded to environmental effects in this balancing exercise and it treats as disproportionate any consideration of environmental effects other than those likely to arise and likely to be substantial.
6. **Integration principle** - The draft policy statement adopts an undemanding definition of the integration principle, out of step with existing precedents. In our view this undermines government's ambitions for joined-up policy-making. It may also introduce incoherence with how this principle is treated elsewhere in international and domestic law.
7. **Precautionary principle** - The draft policy statement suggests a narrow approach to applying the precautionary principle. It places unusual emphasis on innovation, which may detract from the principle's core aim of managing risk in the face of scientific uncertainty.

8. **Implementation** - In our view the draft policy statement lacks sufficiently detailed guidance to support policy-makers across government to implement it thoroughly and consistently. Defra should consider the appropriate level of guidance to be provided within or alongside the policy statement, including better integration with the natural capital guidance set out in the Green Book. It should also consider the arrangements in place within government to oversee policy statement implementation. We would be happy to provide advice on these matters if desired.

In our advice we have sought to provide constructive suggestions for how Defra might address these points. By strengthening the final policy statement, we hope Defra can ensure it achieves its full potential for securing more environmentally sound and joined-up policy-making, as government intends.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'G Stacey', written in a cursive style.

Dame Glenys Stacey
Chair
Interim Office for Environmental Protection

Advice on the Draft Environmental Principles Policy Statement

Q5 Do you think the overview section provides an adequate foundation for policy makers to apply the environmental principles in policy-making?

1. We recommend that Defra strengthens and clarifies the overview section to provide a better foundation for applying the environmental principles.

Intended impact and contribution of the policy statement

2. The introduction section, and the Secretary of State's foreword to the consultation document, set out clear and positive environmental ambitions. However, the overview section does not refer to these ambitions when explaining the policy statement's intended impact.
3. The passage on page six explaining how the Secretary of State is satisfied that the policy statement will contribute to sustainable development and the improvement of environmental protection does little beyond repeating wording from clause 16 of the Bill. It does not, in fact, explain how the Secretary of State expects the policy statement to contribute to sustainable development. Nor does it state in specific terms how it will contribute to the **improvement** of environmental protection compared to past levels of protection already strongly influenced by the five environmental principles.
4. It would be beneficial if Defra addressed these matters in the final policy statement.

Explanation of Bill provisions

5. The overview section refers to relevant Bill provisions. In our view it would be useful if it also provided guidance on how policy-makers should apply those provisions in practice.
6. The overview section could more fully explain provisions such as the clause 18(1) duty to have due regard to the policy statement and the scope of the clause 18(3) exemptions from that duty. This might include examples illustrating the limits of the

exemptions and explaining how policy-makers can demonstrate having due regard. This needs to be done in a way that gives practical effect to the policy intent and is not a 'tick box' exercise. The policy statement might also explain the audit trail policy-makers should keep demonstrating this.

7. Useful guidance on how to approach the clause 18(1) duty might be obtained from where similar wording appears elsewhere in legislation.¹ In such other legislative contexts the courts have treated having due regard as a serious procedure that must be exercised conscientiously, in substance and with rigour. They have referred to the need to avoid rear-guard action and a tick-box exercise. The policy statement would be strengthened in its impact (and potential for litigation reduced) if greater guidance were given on how to ensure the duty is met, drawing on the analogous caselaw.
8. The overview section could also further clarify the scope of 'making policy' to ensure it remains aligned with the Bill and its explanatory notes. It could make clear that making policy includes a conscious decision not to develop or revise a policy or amend legislation. It could also clarify the scope of a "*substantial change*" to policy to ensure policy-makers understand it is the potential effect on the environment that should be determinative.

How to use the policy statement

9. The section on how to use the policy statement does not explain this as helpfully as it could. Although the policy statement advises policy-makers to consider the principles during early policy design, it does not include sufficient detail to help determine whether, and how, to do this at any particular point, especially at the outset of policy-making.

Q6 Do you think step one allows policy-makers to correctly assess the potential environmental effects of their policy?

10. We have concerns about the potential for unintended consequences from the proposed approach to assessing environmental effects. It appears to create a structural weakness in how policy-makers are to apply the environmental principles in

¹ For example, caselaw on section 149 of the Equality Act 2010, a useful summary of which is contained in *R (aoa Bracking) v Secretary of State for Work and Pensions* [2013] EWCA 1345, at [26] (McCombe LJ).

practice. Our concerns arise in four mutually reinforcing areas, as set out below. We strongly recommend Defra addresses these points in the final policy statement.

1. Timing and impact identification

11. We see the logic in a framework for policy-makers to identify the environmental effects of their policies. However, this should not be a first step before considering the principles but an iterative process occurring throughout policy development and alongside application of the principles. Requiring it as the first step could risk policy-makers failing to apply the principles because they are unable to identify environmental effects (which may not be apparent early on in policy-making). Alternatively, it presupposes that policy development is sufficiently well advanced that it is possible to meaningfully assess a policy's environmental effects. This would then risk the environmental principles only being applied late on in policy development.
12. We understand that delaying consideration of the principles is not the intention.² Yet this could be the practical effect of step one. In places, for example the list of actions on page 20, the policy statement also appears to assume that policy direction will have been set before policy-makers begin to consider environmental principles.
13. In our view it would be better to consistently emphasise that policy-makers should consider the principles from the outset to inform and influence policy design, doing so alongside identifying potential environmental effects. This would follow the guidance from caselaw concerning implementing 'have due regard' duties. It would also follow government best practice. For example, the Green Book's 'ROAMEF' cycle (Rationale, Objectives, Appraisal, Monitoring, Evaluation and Feedback) would suggest policy-makers ought to apply environmental principles from the 'Rationale' stage onwards. We also believe that with adequate detailed guidance policy-makers, including those outside Defra, can be supported to successfully implement such an approach.
14. We therefore strongly recommend Defra reconsiders step one to encourage policy-makers to use environmental principles iteratively from the outset and through all subsequent stages in policy development.

² For example, page 7 where it is said that "*environmental principles and this policy statement should be considered in the early stages of policy-making*".

2. Nature of environmental impacts

15. Protecting and progressively enhancing the natural environment are core objectives of the 25 Year Environment Plan. Environmental principles can help guide policy-makers to further both objectives. At present, however, the policy statement's structure and language risk directing policy-makers to focus on minimising environmental harms rather than also maximising environmental benefits. The structure and language may also reinforce the implication, discussed under our point one above, that policy direction will have been set before environmental principles are applied.
16. This arises, for example, through the phrase 'environmental impact'. This phrase generally carries a negative connotation, notwithstanding the broader definition on page eight of the policy statement. The policy statement also appears to use 'environmental impact' in a purely negative sense. Just one example on page 12:

"Application of the integration principle requires proportionate consideration of whether the policy has the potential to cause an environmental impact which could be avoided, minimised or reduced through alterations to the policy."

It is difficult to read this passage as treating 'environmental impact' as encompassing positive 'impacts'.

17. More broadly, the language used in the policy statement tends to direct the reader towards considering negative environmental effects. It is desirable that policy-makers seek to avoid environmental harm. However, the policy statement should also encourage them to consider the potential for incorporating environmental benefits into their policy-making when assessing the effects of policy, including through cost-benefit analysis and avoiding undesirable netting off. This should have advantages for policy-makers since maximising environmental co-benefits – for example via the biodiversity net gain approach – would tend to strengthen the case for a policy, especially with respect to analysing costs and benefits.
18. We therefore recommend Defra replaces 'environmental impact' with a more neutral phrase. This might be the phrase Defra uses in question six of its recent public

consultation: 'potential environmental effects'.³ Whatever the precise terminology, it is important the overall language and emphasis consistently prompts policy-makers to consider opportunities for both avoiding environmental harm and securing environmental benefit.

3. Certainty of impacts

19. The problems described under our heading one above may be further compounded by the policy statement's inconsistent approach to assessing the likelihood of environmental effects.
20. On page eight the policy statement indicates policy-makers' first step should be to "*assess whether a policy **will have** an environmental impact*" (emphasis added). This strongly suggests that the application of environmental principles occurs after the policy has been developed and its effects are certain. It is also inconsistent with other formulations for assessing environmental effects appearing elsewhere in the policy statement. For example, the policy statement suggests (emphasis added in each case):
 - (a) policy-makers should act proportionately by only considering environmental effects "*which are both a) **likely** to occur, and b) **likely** to have a substantial impact*"
 - (b) the rectification at source principle is relevant in relation to "*a policy **likely** to cause environmental damage*" yet this principle should be used to address "***potential** environmental damage*"
 - (c) the polluter pays principle is to be used where there is "*evidence of, or **potential for**, environmental harm*"
 - (d) the integration principle is applicable where policy "*has the **potential** to cause an environmental impact*"

³ 'Environmental effects' is the phrase we use in this advice to mean both environmental harms and environmental benefits.

- (e) the prevention principle is applicable "*where a policy **will cause** environmental harm*" yet "*its application involves... understanding the **potential** environmental harm of the policy*", and
- (f) in applying the prevention principle, "*the policy-maker must consider the **potential** harm identified in the policy through Step One (Understanding Environmental Impact)*" - this notwithstanding that step one actually suggests (inconsistently) that policy-makers need only consider harm which 'will' arise or is 'likely'.

- 21. The policy statement and recent consultation document do not explain these inconsistencies, which appear to simply reflect imprecise drafting. This imprecision risks misleading policy-makers and ought to be addressed.
- 22. Government's intention appears to be that policy-makers fully consider the potential for environmental effects in their policy development.⁴ We believe this is the correct approach. This would be better supported by clear and consistent statements throughout the document that policy-makers should identify potential environmental effects from the policy options under consideration.

4. Proportionality

- 23. With respect to proportionality, our view is that it is overly restrictive to only consider environmental effects that are both likely to occur and likely to be substantial. Doing so would appear to contradict government's policy intent, as described in paragraph 22 above and footnote four. It may also tend to reduce the effectiveness of the policy statement in practice. For example, pursuing a particular policy might reasonably be expected to have some potential for causing environmental harm, although this is not sufficiently certain to regard as 'likely'. However, should the harm occur, it would inevitably be widespread and irreparable. It should usually be proportionate to take account of such an eventuality, even though only 'possible', based on its severity. A

⁴ See, for example, the fact that views were sought during consultation on whether step one allows policy-makers to "*correctly assess potential environmental effects*" and the Secretary of State's foreword to the consultation document, in which he states "*It is vital that any potentially damaging impacts, or opportunities for environmental benefit, are considered and addressed in the early stages of policy development, where possible. The application of these principles, through this policy statement, aims to achieve that*".

number of individual effects may only become substantial when considered cumulatively.

24. The proposed approach to proportionality also risks compounding other issues with step one discussed above. For example, regarding timing and the nature of 'impacts', an environmental benefit may not immediately appear 'likely' or 'likely to be substantial' during early policy development. The proposed approach to proportionality would therefore suggest policy-makers need not consider the potential for securing environmental benefits any further. Yet, through application of the environmental principles, policy-makers might have identified proportionate policy changes to deliver substantial environmental benefits at no detriment to the primary policy goal. The policy statement should encourage such win-win outcomes.
25. Finally, the overall approach to proportionality, including the framing and language used, and the examples given, can tend to suggest environmental factors carry little weight in the proportionality balancing exercise. Adopting that approach risks not delivering government's ambitions for the environment.
26. We therefore consider Defra should amend the policy statement to avoid an unduly restrictive and negative approach to proportionality, to allow for the possibility that environmental effects carry considerable weight in deciding what is proportionate,⁵ and to align with the intent that policy-makers consider potential environmental effects.

Overseas effects

27. The policy statement states on page nine that "*if it is relevant to consider the overseas impact of a policy, this must be done proportionately and within reason*". This is reasonable, but we anticipate the same approach should apply to domestic effects. The last sentence of the same paragraph requires a "*strong rationale*" for considering overseas impacts, which may be understood to be a higher bar than for domestic effects. We think the real test should be the significance and likelihood of the environmental effects, rather than their location.

⁵ For a contrasting approach see section 15 of MHCLG's National Planning Policy Framework, which is more directive in how the environment should be balanced against other factors, and does not shy away from emphasising, where relevant, the "*great weight*" to be given to environmental considerations.

28. The 25 Year Environment Plan contains commitments for "*protecting and improving our global environment*", including by "*leaving a lighter footprint on the global environment*".⁶ These commitments may be undermined by treating overseas effects of domestic policies differently to in-country effects. We therefore recommend Defra looks again at this section of the policy statement.

Q7 Do you think step one ensures that policy-making will address the most important environmental effects?

29. For the reasons given in answer to question six above, we believe step one should be improved to avoid unintended consequences and to promote a less restrictive approach. This would better reflect government's stated ambitions and policy intent.

Q8 Will step two assist policy-makers in selecting the appropriate environmental principles?

30. Step two makes a useful start to describing the environmental principles. However, it does not contain the level of guidance we think would help policy-makers select the principles to apply in different circumstances. As currently drafted, step two adds little to steps one and three.

31. This could be improved by including case studies of when specific principles are likely to be relevant and to illustrate how applying those principles supports better policy-making.

Q9 Do you think step three provides a robust and sufficient framework for the application of each individual environmental principle?

(a) Integration

32. We recommend that Defra reconsiders the definition of the integration principle contained in the policy statement.

33. The principle is currently stated in vague, caveated and undemanding language. It is described as a principle of effort (to 'look for opportunities' to integrate) rather than of outcome (to integrate). The drafting does not link this principle to sustainable

⁶ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (January 2018), pages 110 and 125.

development. This is all contrary to how the principle is generally described, including earlier in Defra's policy development.⁷

34. Many of the environmental and other problems facing government are complex and involve trade-offs that can only be successfully made through a joined-up, cross-departmental approach. Government's aim is that the policy statement helps towards that approach. In our view, such a weak definition of the integration principle will not deliver this outcome.
35. It also risks incoherence between the approach promoted by the policy statement and that taken elsewhere in international and domestic law.
36. The integration principle is incorporated into numerous international treaties and other documents including, for example, the Rio Declaration, UN Framework Convention on Climate Change (UNFCCC) and Convention on Biological Diversity (CBD).⁸ Reflecting their specific contexts, these three instruments allow varying degrees of flexibility in integrating environmental considerations into other policy areas. But they all express the principle with a stronger commitment to integration as an end result than the policy statement does.
37. In the UK-EU Trade and Cooperation Agreement (UK-EU TCA), the government recently affirmed its commitment to the integration principle, including specifically as it is worded in the Rio Declaration, UNFCCC and CBD. At the same time, it committed to "*the principle that environmental protection should be integrated into the making of policies, including through impact assessments*".⁹
38. Subject to limited conditions, existing domestic law is to be modified to reflect these commitments.¹⁰ This modification is automatic, such that existing domestic law now means what the UK-EU TCA requires that it means, regardless of the legislative language used.¹¹

⁷ Defra, *Information Paper on the Policy Statement on Environmental Principles* (December 2018), page 14.

⁸ Rio Declaration, Principle 4; UNFCCC, Articles 3.4 and 4.1; CBD, Articles 6 and 10.

⁹ UK-EU TCA, Article 393.

¹⁰ European Union (Future Relationship) Act 2020, section 29.

¹¹ *Lipton v BA City Flyer Ltd* [2021] EWCA Civ 454, [78].

39. On 13 June the Prime Minister, as chair of the G7, also committed to integrating nature and climate considerations in stronger, more outcome-focussed terms than appear in the policy statement.¹²
40. Consequently, we recommend Defra revisits the approach to the integration principle to ensure coherence between the policy statement and the approach to integration taken elsewhere in international and domestic law.

(b) Prevention

41. Broadly we believe the draft policy statement provides an adequate approach to applying the prevention principle.
42. However, we believe the definition of the principle should be amended to reflect that the principle is about preventing environmental harm, not mitigating or reducing it. This is the approach promoted through the text dealing with the principle, so it is not clear why a less focused definition is given. That definition also risks inconsistency with how the principle is framed elsewhere, including earlier in Defra's policy development.¹³

(c) Rectification

43. Broadly we believe the draft policy statement provides an adequate approach to applying the rectification at source principle. We do, however, have some observations.
44. The definition of the principle as it appears in step two could be better articulated to reflect the fuller description given in step three. Step two refers to applying the principle only where "*damage to the environment cannot be prevented*", which is narrower than the step three interpretation. The policy statement should consistently reflect the latter approach. This should be with the aim of making clear the potential benefits of applying the principle to help prevent harm at or near its source (for example via the introduction of clean or innovative technologies rather than 'end of pipe' abatement).

¹² *G7 2030 Nature Compact* (Carbis Bay, 13 June 2021), paragraphs B, 4(A) and the concluding paragraph; see also the Secretary of State's 'Joint Commitments' in the *G7 Climate and Environment Ministers' Meeting Communiqué* (London, 21 May 2021), paragraphs 23 and 53.

¹³ *Ibid* (7), page 15.

45. For the same reason, we also question the passage on page 19 under the heading 'Interaction between the principles' that "*If [environmental damage] is to be addressed after it has occurred, then the rectification at source and polluter pays principles should be considered to limit or disincentivise damage*". We do not think these principles should be only concerned with addressing environmental damage after it has occurred.

(d) Polluter pays

46. Broadly we believe the draft policy statement provides an adequate approach to applying the polluter pays principle.

47. However, the policy statement ought to make clear that the principle is applicable beyond just when preventing environmental harm is not possible or proportionate. The principle is designed to internalise environmental costs.¹⁴ An intended consequence of this is that potential polluters avoid causing pollution in the first place. The principle is also such that potential polluters should bear the costs of policies to prevent their pollution arising.¹⁵

48. We therefore agree with the statement on page 15 under the 'Description' heading that the principle "*can be used in the design of a policy (before the damage has occurred) to prevent or deter environmental damage*". This could be seen as contradicted, however, by the suggestion under the next heading that the principle is applicable where prevention of harm is not possible or proportionate. We believe this should be clarified to promote the first approach.

49. The text under the heading 'Application of the polluter pays principle' could be clearer that policy-makers should consider the matters discussed there at early policy design stages. This is for the reasons discussed under question 6 above.

50. We note the statement on page 16 that "*policy-makers must use judgement to identify who the polluter is and the extent to which the polluter ought to and is able to pay*". Policy-makers may be assisted in this judgement by more specific and detailed

¹⁴ *Fisherman & Friends of the Sea v Minister of Planning, Housing and the Environment* [2017] UKPC 37, [2] (Carnwath SCJ).

¹⁵ *Case C-293/97 R v Secretary of State for the Environment, ex p Standley* [1999] ECR I-2623, [93] (Opinion of AG Léger).

guidance for incorporating environmental principles into their decision-making. This might include examples to illustrate best practice.

51. Finally, for the reason given at paragraph 45 above, we do not consider the section on 'Interaction between the principles' fully captures the scope of the polluter pays principle.

(e) Precautionary

52. We recommend aspects of the proposed application of the precautionary principle are considered further to improve the policy statement's clarity and effectiveness.
53. The policy statement adopts the well-recognised Rio Declaration definition of the precautionary principle. However, the way the policy statement describes the principle's application diverges from how this is generally understood and applied. This could lead to unhelpful variance from existing international and domestic law approaches, including as discussed at paragraphs 35 to 38 above in relation to the integration principle (since the Rio Declaration, UNFCCC, CBD and UK-EU TCA all also feature the precautionary principle).
54. Further, the passage on innovation does not fit well with the rest of the explanation of the precautionary principle. The proper status of innovation in relation to the principle is contestable.¹⁶ Being precautionary may stimulate policy and technological innovation. But promoting innovation is not generally understood to be an integral part of the precautionary principle itself. It is neutral on the question of innovation. Rather, the principle is concerned with the limits of scientific understanding and managing risk. The policy statement's emphasis on encouraging innovation may therefore dilute this core purpose.
55. More generally, we think the policy statement should avoid the sort of narrow approach to precaution that can limit the principle's effectiveness in practice (as it has done in the past with highly damaging effects¹⁷). On pages 17 and 18, the policy statement indicates that the principle is relevant only when there is scientific uncertainty over both

¹⁶ European Environment Agency, *Late Lessons from Early Warnings: Science, Precaution, Innovation* (2013) EEA Report No 1/2013.

¹⁷ *Ibid.*

the likelihood and the severity of environmental damage. This could allow preventable environmental harm. For example, there may be a high degree of certainty that environmental harm would occur from adopting a particular policy but doubt as to just how severe such harm would be (or vice versa). In such cases we think the precautionary principle's risk-based approach should apply to guide policy-makers in dealing with this uncertainty.

56. It would also be helpful for the policy statement to describe how the precautionary principle interacts with other principles. Notably, it is the only principle absent from the section on page 19 dealing with that interaction. The government has long recognised that the precautionary principle serves a similar role to the prevention principle.¹⁸ Hence, the omission of the precautionary principle could be readily addressed by placing it alongside the prevention principle in the first sentence of the second paragraph.
57. For similar reasons we consider the policy statement should note the recognised relationship between precaution and endangered habitats/species and other national environmental priorities. That relationship is similar to that already covered for prevention on page 13 of the policy statement.¹⁹

Q10 Do you think the process for applying the policy statement (the three steps) provides a robust and sufficient framework for the application of the environmental principles as a whole?

58. We recognise the potential benefit of a framework to help structure how policy-makers apply the environmental principles. However, for the reasons given in connection with question six above, we believe that the current three-stage approach risks flawed application of the principles in practice.

¹⁸ See for example Department of the Environment, *Environment in Trust* (March 1989) Cm 552; and Department of the Environment, *Our Common Heritage: Britain's Environmental Strategy* (September 1990), Cm 1200.

¹⁹ I.e. the policy statement should clarify that when applying the precautionary principle, policy-makers "*should have particular regard for habitats/species that are endangered or vulnerable, and national environmental priorities*".

59. To strengthen the guidance offered to policy-makers, we also recommend that the policy statement provide clearer practical information on how and when to apply the principles. We do not believe the policy statement would currently enable policy-makers to know in practical terms what they should do, when and how to apply the environmental principles effectively.
60. For example, on page nine it would be helpful to explain for policy-makers, especially those outside Defra, how they can assess the environmental effects of their policies. This may include taking account, not just of the magnitude of potential effects but also their different spatial and temporal dimensions. Similarly, where the policy statement refers to cost-benefit analysis or balancing social, economic and environmental considerations (e.g. pages 10 and 11) it could make this more tangible by referring explicitly to the Green Book and other existing methodologies, standards and best practices. This would include taking a natural capital approach. On page 11 it would be helpful to clarify the process for when, despite having had due regard to the policy statement, inaction may be justified in accordance with Bill clause 18(2).

Q11 Do you have any other comments on the draft policy statement which are not covered by the previous questions?

61. We have two further general observations, as follows.

Tone and emphasis

62. The policy statement comes across as hesitant and lacking in confidence in how it presents the environmental principles. Several passages start with what the policy statement is not for or what it does not require of policy-makers. The policy statement gives numerous examples of where it would be appropriate for policy-makers to take minimal or no action having considered the principles.
63. Consequently, the benefits of the policy statement, of the five environmental principles within it, and of the environmental ambition behind it, do not come across as they should.
64. We recommend Defra revisits the overall tone of the policy statement to present environmental principles in more positive, certain and determined terms. It could make improvements by balancing the points noted above with statements, examples and

explanations of the clear benefits to be gained from applying the environmental principles.

65. Without such additions, we are concerned policy-makers will find it easy to identify what the policy statement does not require of them but will be much less certain of what it does require, or of the advantages to their policy-making from applying the environmental principles.

Implementation and natural capital

66. We note the observation on page 14 of the policy statement regarding the natural capital approach. This approach could be emphasised more frequently, particularly alongside each of the references to cost-benefit analysis or balancing the principles with economic and social considerations.
67. It would also be better to strengthen the wording used such that the natural capital approach *should* be applied wherever it is relevant to do so. That approach is at the heart of the government's 25 Year Environment Plan and fundamental to the aim of being the first generation to leave the environment in a better state than we found it. The importance of following a natural capital approach has also been brought into sharp focus recently by HM Treasury's Dasgupta Review.²⁰
68. As currently drafted the policy statement appears isolated from other government policies on the environment and matters such as the natural capital approach and biodiversity net gain. We believe the document ought to recognise how the application of environmental principles could be valuable in achieving the government's wider goals such as those in the 25 Year Environment Plan and zero-carbon policies.
69. We also believe Defra should consider carefully how it ensures the policy statement is embedded in the practice of wider government decision-making and the governance arrangements in place to secure this. This might be, for example, via the functioning of cross-government regulatory scrutiny and assessment mechanisms.
70. This should include considering how to link the policy statement with government's wider environmental goals and the natural capital approach. It is important, for

²⁰ Dasgupta, P. (2021), *The Economics of Biodiversity: The Dasgupta Review* (London, HM Treasury).

example, that policy-makers use the policy statement in a manner consistent with delivering the 25 Year Environment Plan, meeting targets to be set under the Environment Bill and delivering government's commitments, such as that in response to the Dasgupta Review to achieve "*a nature positive future*".²¹

71. HM Treasury's Green Book offers an established framework for good policy-making. Green Book guidance was updated in March 2018 to include consideration of natural capital. However, in November 2020 the Natural Capital Committee (NCC) found limited evidence of policy-makers considering natural capital in their policy appraisals.²²
72. It is important policy-makers are supported to implement the policy statement, and associated legal duties, thoroughly and consistently. Doing so offers considerable potential for better policy-making, to deliver government's ambitions, and to avoid poor implementation in practice as highlighted by the NCC in relation to natural capital and the Green Book.

²¹ HM Treasury, *The Economics of Biodiversity: The Dasgupta Review Government Response* (June 2021), Cm 466.

²² Natural Capital Committee, *The Green Book guidance: embedding natural capital into public policy appraisal – November 2020 update* (November 2020).